



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 22 2011

REPLY TO THE ATTENTION OF:

AE-17J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Scott R. Tatro, Director, U.S. Northern Operations  
Marsulex, Inc.  
1400 Otter Creek Road  
Oregon, Ohio 43616-1232

Dear Mr. Tatro:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Marsulex, Inc., CAA Docket No. CAA-05-2011-0030 As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on Feb 22, 2011.

Pursuant to paragraph 33 of the CAFO, Marsulex, Inc. must pay the civil penalty within 30 days of the date the CAFO was filed, Mar 24, 2011. Your check must display the case name, Marsulex, Inc., the docket number, CAA-05-2011-0030 and the billing document number, 2751103A028.

Please direct any questions regarding this case to Robert H. Smith, (312) 886-0765.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. MacDowell".

William L. MacDowell, Chief  
Air Enforcement and Compliance Section (MN/OH)

Enclosure

Cc: Robert Hodanbosi, Ohio EPA  
Karen Granada, City of Toledo

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Marsulex, Inc.  
Oregon, Ohio**

**Respondent.**

) **Docket No. CAA-05-2011-0030**  
)

) **Proceeding to Assess a Civil Penalty**  
) **Under Section 113(d) of the Clean Air Act**  
) **42 U.S.C. § 7413(d)**  
)

**RECEIVED**

**FEB 22 2011**

**Consent Agreement and Final Order**

**Preliminary Statement**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act); 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Marsulex, Inc. (Marsulex), a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c) any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background.**

9. Section 109(a) of the Act, 42 U.S.C. § 7409(a), requires EPA to establish health based National Ambient Air Quality Standards (NAAQS) for each criteria pollutant. The Act divides standards into two groups: primary ambient air quality standards to protect the public health with “an adequate margin of safety,” and secondary standards to protect the public welfare (such as injury to agricultural crops and other property). Section 109(b) of the Act, 42 U.S.C. § 7409(b). EPA has developed NAAQS for six pollutants: carbon monoxide, lead, NO<sub>2</sub>, PM, ozone, and SO<sub>2</sub>.

10. Pursuant to Section 107 of the Act, 42 U.S.C. § 7407, EPA has classified certain areas within each state as attainment, nonattainment, or unclassified (i.e., unknown) with respect to whether the area meets the NAAQS for each criteria pollutant. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each state has the responsibility for submitting to EPA for approval an implementation plan which specifies how the state will achieve, maintain, and enforce all primary and secondary NAAQS.

11. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. The plans, which are adopted by the states after public hearings, are required to

include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government. Section 113(a) of the Act, 42 U.S.C. § 7413(a).

12. In accordance with Section 110(a)(2), 42 U.S.C. § 7410(a)(2), Ohio EPA submitted OAC 3745-31 to be included as part of Ohio's SIP. On October 31, 1980, EPA approved OAC 3745-31 as part of the Ohio SIP. 40 Fed. Reg. 72119 (October 31, 1980).

13. OAC 3745-31-02(A) requires any owner or operator of a stationary source to obtain a permit-to-install (PTI) from the Director of the Ohio EPA prior to installing or modify an air contaminant source. Further, the Director of the Ohio EPA will issue a PTI only if he/she determines that the installation, modification, or operation of the air contaminant source will, among other things, employ Best Available Technology (BAT). OAC 3745-31-05(A)(3) requires that BAT is determined, established, and required in either the initial PTI, or when a modification of the air contaminant source requires the issuance of a PTI.

14. Clean Air Act §§ 501 through 507 (Title V), 42 U.S.C. §§ 7661a through 7661f, requires state and local authorities to develop a major source operating permit program. These operating permits (referred to as Title V permits) are required by Section 504(a), 42 U.S.C. § 7661c, to contain all applicable emission limitations and standards of the Act for each major source. For the purposes of Title V, a major source is defined as a source with a potential to emit greater than 100 tons per year of any criteria air pollutant.

15. 40 C.F.R. Part 70 contains the implementing regulations for the Title V permitting program. 40 C.F.R. § 70.5(a) requires the owner or operator of each major source apply for an operating permit under Title V of the Clean Air Act (Title V Permit).

16. 40 C.F.R. § 70.6(a) requires that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the CAA and the requirements of the applicable SIP. Among other things, “applicable requirements” include any term or condition of any preconstruction permit issued under Section 110 of the Act, 42 U.S.C. § 7410, such as limits established by Ohio EPA as BAT in a PTI under Ohio SIP rule OAC 3745-31-05(A)(3).

17. Furthermore, 40 C.F.R. § 70.7(b) requires major sources to operate in compliance with all terms and conditions of an issued Title V Permit.

18. EPA fully approved the Ohio Title V program, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio’s Title V permit requirements are codified at OAC 3745-77.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred from March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. The Administrator may assess a penalty greater than \$295,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$295,000 is appropriate for an administrative penalty action.

22. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

24. Marsulex owns and operates two sulfuric acid plants at 1400 Otter Creek Road, Oregon, Ohio. The sulfuric acid plants are identified as Sulfuric Acid Plant A, Emission Unit P001, and Sulfuric Acid Plant B, Emission Unit P002.

25. Ohio EPA first issued PTI No. 04-00923 on March 8, 1995 to allow Marsulex to modify Sulfuric Acid Plants A and B. The March 1995 permit established a limit prohibiting Plants A and B from emitting CO emissions greater than 0.82 lb/hour and 3.59 tons per year, and identified such rates as Best Available Technology (BAT) in accordance with OAC 3745-31-05(A)(3). Subsequent to March 1995, PTI No. 04-00923 has been amended by Ohio EPA three times, most recently on October 21, 2004. Each amendment has retained the 0.82 lb/hour and 3.59 tons per year CO limits.

26. Ohio EPA issued Title V Permit No. P0088529 covering Marsulex's source on January 30, 2004. Because the CO limits referenced in paragraph 25 above were established in a PTI, these limits are considered "applicable requirements" as defined under 40 C.F.R. § 70.2. Therefore, in accordance with 40 C.F.R. § 70.6(a), Marsulex's Title V Permit incorporated the

CO limits of 0.82 lb/hour and 3.59 tons per year for Sulfuric Acid Plants A and B. These provisions are located at Part III, Emission Unit P001; A.1.1. for Sulfuric Acid Plant A and Part III, Emission Unit P002, A.1.1. for Sulfuric Acid Plant B.

27. Marsulex's failure to meet its CO emission limits at its Sulfuric Acid Plants A and B from approximately March 8, 1995 to December 13, 2010, is a violation of Section 502 of the CAA, 42 U.S.C. § 7661a, and the implementing regulation at 40 C.F.R. § 70.7(b); the Facility's Title V Permit No. P0088529; Section 110 of the CAA, 42 U.S.C. § 7410, and the implementing regulation at 40 C.F.R. § 52.23; and the Facility's PTI No. 04-00923.

28. On May 18, 2010, Marsulex issued a letter to EPA self-disclosing that both Sulfuric Acid Plants A and B may have emitted and continue to emit CO in excess of 0.82 lb/hour and 3.59 tons per year. Marsulex's self-disclosure of these exceedences is based on emissions calculations utilizing heat input rates to the Plants' acid decomposition furnaces.

29. Marsulex's excess CO emissions from Sulfuric Acid Plants A and B are violations of the CO limits of 0.82 lb/hour and 3.59 tons per year for these plants as provided in PTI No. 04-00923.

30. Marsulex's excess CO emissions from Sulfuric Acid Plants A and B are violations of the CO limit of 0.82 lb/hour and 3.59 tons per year for these plants as provided in Marsulex's Title V Permit, No. P0088529.

31. Marsulex was notified of these violations in a Notice of Violation/Finding of Violation issued by EPA on September 30, 2010.

32. On December 13, 2010, Ohio EPA issued PTI No. P0106518 for the purpose of revising upwards the CO emission limitations on Sulfuric Acid Plants A and B. This permit establishes CO limits of 7.41 lb/hr and 32.46 tons/year for Sulfuric Acid Plant A, and 4.12

lb/hour and 18.04 tons per year for Sulfuric Acid Plant B. PTI No. P0106518 identifies these rates as Best Available Technology (BAT) in accordance with OAC 3745-31-05(A)(3). The CO limits established in PTI No. P0106518 supersede the CO limits of 0.82 lb/hr and 3.59 tons per year set forth in the permits cited above. Emissions calculation information along with EPA reference method stack test data suggests that Sulfuric Acid Plants A and B are in compliance with the new CO limits established in PTI No. P0106518.

#### Civil Penalty

33. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Marsulex's high level of cooperation, and Marsulex's prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$112,175.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$112,175 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

[for checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes)]



U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note Docket Number of this CAFO and the Billing Document number. The Docket Number and Billing Document Number will be provided with a final copy of the final CAFO following its filing with the Regional Hearing Clerk.

35. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Robert H. Smith (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **General Provisions**

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

40. The effect of the settlement described in paragraph 39, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 28 of this CAFO and Respondent's letter dated May 18, 2010.

41. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

42. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 39, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

43. Respondent certifies that it is complying fully with CO emission limitations contained in PTI No. P0106518.

44. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

45. The terms of this CAFO bind Respondent, its successors, and assigns.

46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and attorneys's fees in this action.

48. This CAFO constitutes the entire agreement between the parties.

**Marsulex, Inc., Respondent**

February 14, 2011  
Date

Scott R. Tatro  
Scott R. Tatro, Director,  
U.S. Northern Operations

**United States Environmental Protection Agency, Complainant**

2/16/11  
Date

Cheryl L. Newton  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of:**

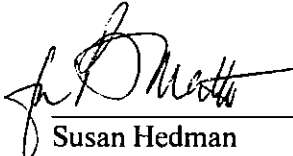
**Marsulex, Inc.**

**Docket No. CAA-05-2011-0030**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-16-11  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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FEB 22 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**In the Matter of: Marsulex, Inc.**  
**Consent Agreement and Final Order**  
**Docket No. CAA-05-2011-0030**

**Certificate of Service**

I certify that I hand-delivered two copies of the Consent Agreement and Final Order (CAFO), docket number **CAA-05-2011-0030** to the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, by placing them in the custody of the United States Postal Service addressed as follows:

Scott R. Tatro, Director U.S. Northern Operations  
Marsulex, Inc.  
1400 Otter Creek Road  
Oregon, Ohio 43616-1232

Charles Perry  
Jones Day  
1420 Peachtree Street, N.E., Suite 800  
Atlanta, Georgia 30309-3053

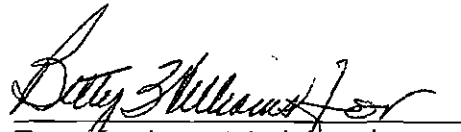
**RECEIVED**  
FEB 22 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

I also certify that a copy of the CAFO was sent by first-class mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

Karen Granada, Administrator  
City of Toledo, Division of Environmental Services  
348 South Erie Street  
Toledo, Ohio 43604

On the 22 day of February 2011

  
Tracy Jamison, Administrative  
Program Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

70091680000076702096